# No. 7023

IN THE

# United States Circuit Court of Appeals

**For the Ninth Circuit**

UNITED STATES OF AMERICA,
*Appellant,*

vs.

SIDNEY T. BURLEYSON,
*Appellee.*

## BRIEF ON BEHALF OF APPELLEE.

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### HISTORY OF THE CASE.

This is the second appeal to this Court. The case has twice been tried before juries in the District Court. In each instance the jury returned a verdict for the plaintiff. The first judgment for the veteran was reversed on the technical ground that a written disagreement with the Veterans' Bureau had not been established. On a retrial the disagreement, under the new statute, was admitted and the jury again returned a verdict in favor of the veteran.

### QUESTION TO BE DETERMINED.

The veteran appellee having been discharged on report of the medical survey as permanently disabled,

and affirmative evidence produced by the army surgeon, government reports, qualified attending physician and various lay witnesses to the effect that the appellee was permanently disabled by an admittedly incurable disease, is the verdict of the jury to be reversed because the appellee, over an extended period (during a large part of which he was ignorant of his right of veteran's relief) intermittently worked for various employers in an effort to support himself and pay his doctors, each employment being terminated by inability to continue the occupation?

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**STATEMENT OF FACTS.**

The appellee enlisted in the Marine Corps at the age of eighteen. He had always been a farmer and had never gone beyond the tenth grade in school. (Transcript page 13.) He enlisted July 30th, 1918, and was discharged, under a medical survey, July 10th, 1919, having served within a few days of one year. (Exhibits pages 126-7.) His year of service was a constant succession of maladies. Before departure from Quantico for Vladivostok he was ill six weeks in temporary barracks, the hospital being filled. After convalescence, he embarked for Vladivostok. Before arrival in Honolulu he became ill and on board ship was stricken with appendicitis. At Pearl Harbor his appendix was removed, and while still in his cot, his tonsils were removed. After a few days he was put on duty carrying cans, etc., then sent to heavy drill duty. Thereupon commenced the trouble which even-

tually resulted in his discharge and present condition. (Transcript pages 13-14.) He became afflicted with terrible pains, his arches crushed down and began to swell; his feet turned red and arches went flat. He was sent to the hospital with "terrible pain in my legs and feet up into the calf of the leg below the knee." Without any application on appellee's part, he was ordered up for medical survey before three or four surgeons while in the Hawaiian Islands, was declared unfit for duty and sent to Mare Island for discharge. At that time he was suffering with terrific pains and his limbs had turned red. (Transcript page 15.)

**Medical survey on discharge finds permanent disability.**

The report of the medical survey is found among the exhibits (pages 126-127). It is:

> "Complains of severe pain in arches, extending well up into legs. Feet and legs swollen. Cannot wear shoes for any length of time. On examination feet markedly pronated. Rest, special exercises, etc., have given no permanent improvement.
>
> Present condition: *Unfit for service.*
>
> Probable future duration: *Permanent.*
>
> Recommendation that he be transferred to the MB Mare Island, Calif., for discharge from the service. * * *
>
> 7/11/19 *invalided* from Naval service."

Thus we start with the initial finding of the medical survey that the veteran was discharged for *permanent disability.*

Several days before his discharge two petty officers presented to the appellee a waiver. He was not permitted to read it, but their order to him was: "Never mind; just sign." He refused and the commander then ordered him to sign and he obeyed. He understood it to be a waiver of all claim for compensation and hospitalization and that he had no claim against the government. "They made me sign it."

The case is noteworthy because of the obvious fact that the appellee was ignorant of his rights, assumed that he had waived all claims and that he was entitled to no hospitalization or attenion, and struggled on supporting himself and paying doctors at the expense of his health.

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**STATUS AS TO POLICY.**

Unlike most veterans, the appellee did not cease payments on his policy at the time of his discharge. On the contrary, he continued to pay the premiums for about seven months after his discharge, and it was stipulated at the trial that his war risk insurance was in full force, by virtue of premium payments, until March 1st, 1920. (Transcript page 63.)

We thus have the unusual situation of a veteran continuing the premiums on his policy for seven months after he had been discharged for permanent disability.

## THE QUESTION PRESENTED.

The question before the Court is this:

The jury having found in favor of the appellee, is there substantial evidence to support the finding of the jury that it was impossible for the appellee to follow continuously a substantially gainful occupation for which the veteran is qualified?

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## THE LAW.

It is settled in this circuit and others that where a jury has returned a verdict, the only question is:

> "Was there any substantial evidence from which the jury would be warranted in finding total and permanent disability.
>
> *U. S. v. Meserve,* 44 Fed. (2d) 549 (9th Circuit);
>
> *U. S. v. Griswold,* 61 Fed. (2d) 583 (9th Circuit);
>
> *U. S. v. Baxter,* 62 Fed. (2d) 182 (9th Circuit).

In considering the evidence the rule is that the policy is to be liberally construed to protect the rights of the insured.

*U. S. v. Sligh,* 31 Fed. (2d) 735.

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## THE EVIDENCE WITH RESPECT TO PERMANENT DISABILITY DURING THE LIFE OF THE POLICY.

The veteran, having terminated his service in the Marine Corps by honorable discharge on report of the medical survey on July 10th, 1919, continued to

maintain his policy in full force and effect until March 1st, 1920. (Transcript page 63.)

The evidence is overwhelming that the appellee is a victim of a disease, rare in the human family, defined as "thrombo angiitis obliterans," otherwise known as "Buerger's disease." This is a progressive disease resulting from a breaking down of the blood vessels in the extremities and a suspension of circulation.

Lieutenant Kelly, government surgeon at the Letterman Hospital testifying for the appellee and against the Government, graphically describes the origin and progress of this distressing disease. (Transcript page 37.)

This witness has himself contributed a medical treatise on this particular subject, and is the author of various monographs recognized by the profession with regard thereto.

We quote from his testimony as follows:

> "The disease is best known or described by the name thrombo angiitis obliterans; thrombo means 'clot'; angiitis means 'inflammation of a blood vessel'; and obliterans means 'obliteration.' Of its cause, nothing definite is known. There are many conjectures but nothing has been proven by workers on the subject. In the blood vessels themselves the first thing that happens is the thickening of the inner lining of the blood vessel; the next thing is a laying down of a soft clot in the blood vessel. Following that, this clot is gone. By that we mean that there is scar tissue and active tissue as well comes into the clot, and the

clot goes on to gradually and eventually cause obliteration of the blood vessel. One of the usual concomitants is much pain. There is usually two types of pain, one type of pain is that which is brought on by exercise relieved by rest, the other is present when there is rest and is present at all times."

That this disease had its origin during the service of the appellee in the Marines admits of no question under the evidence.

That he was, by virtue thereof, permanently disabled at the time of his discharge from the service likewise admits of no dispute.

The report of the medical survey, already quoted, inserted at page 126 of the Transcript, definitely states that there will be no improvement and that the disability is permanent.

Corroborating this, Dr. Kelly testified as follows (Transcript page 38):

"He seemed to be suffering constant pain. It is a progressive disease, from the mild form to a more severe. As time goes on it becomes progressively worse. There is nothing known to the medical or surgical profession which will result in complete cure. Something can be done for improvement but not for cure. I can not say whether or not he will ever be better than he is at present. I don't believe he will obtain relief without surgery. Ultimately, without some relief, this congestion in the blood vessels will result in gangrene, and gangrene must be eliminated by amputation. That is a thing that will always be considered in this case. To avoid amputation

you have to undergo a long period of hospitalization with intensive treatment."

Speaking then of the legal definition of permanent disability, Lieutenant Kelly testified (Transcript page 39):

"My opinion is that the plaintiff is permanently disabled and has been at all times since he has been under my observation."

Again (Transcript page 40):

"The Court. Q. From the statement made by plaintiff, if you accept his statement to be true, do you feel that he was totally and permanently disabled at the time of his discharge from the service?

A. I believe he was, yes sir."

Asked concerning the labor record of the appellee, Lieutenant Kelly testified as follows (Transcript page 41):

"Q. How do you reconcile that work record with this history in your mind?

A. It does not conform to the definition. It was not a *continuous* work record."

Thereupon, the Court, pursuing a highly intelligent examination, proceeded:

"The Court. Well, doctor, the circumstance is this, I presume, that you feel that if he has stated correctly to you his condition and as to the time, that he was unfit to follow any employment; you don't say he couldn't have done the work indicated, but you think in doing so he was impairing his health; in other words, a man might have consumption and still continue at a

task, although in doing the work he is shortening his life, is that your idea? He was hurting himself when he did that work?

A. Yes sir." (Transcript page 41.)

Again, being questioned by the Court, on page 45 of the Transcript, he says:

"Q. And in this case if you accept the history as given on the witness stand as true, if that history is true, in connection with your own observation, do you feel that he was permanently and totally disabled at the time he was discharged; you do, don't you?

A. Yes sir."

Stating that the disease may run a course of from five to fifteen years, ending in gangrene, the witness stated:

"The Court. When they had gangrene—the only remedy (amputation)—where there is gangrene?

Q. And is that the invariable course in this disease?

A. Untreated, yes."

The acompanying symptoms described by the government physician in the appellee's case were suspension of circulation, diminished or obliterated pulse, bursting of the skin, exuding of pus and other distressing accompaniments indicating a well advanced state of the disease.

Quoting from page 49:

"He will have to undergo treatment in order to keep himself stationary as he is at the present time, for the rest of his life. He may undergo

> the cutting off of certain nerve centers and obtain relief, but not a cure. I do not believe his limbs will ever be any better than they are at present. Any kind of work that entails the use of the lower limbs would aggravate the trouble or at least retard possible recovery. Work entailing the use of the legs is detrimental to his health."

Taking now the testimony of Dr. Eidenmuller, who first diagnosed the disease correctly, attention is called to his testimony on pages 52 to 59 of the transcript. He says:

> "It is a comparatively rare disease among human beings. There is no known treatment or cure for it. * * * It is a progressive disease."

The witness then stated that the disease probably had been of twelve years' duration. This puts it back long before the expiration of the appellee's policy.

The witness stated, without question, that the appellee was afflicted with the disease while still in the service of the United States (page 55), and that he was permanently and totally disabled during the time he was in the marine service of the United States and that the disability has continued to the present time.

Speaking of the possibility, if not probability, of amputation as the only relief, the witness testified:

> "It is a progressive disease. In the normal course it progresses beyond the point where it is and may continue that way, but in that event it would mean continued life of mental suffering and physical disability. On the other hand there might come a time not far off, or further off, I

hope, when it does come, when nature will not be able to supply enough blood through the collateral vessels for the feet and legs to live, in which event they will die, and when those parts die suddenly—we speak of that as gangrene, and when that takes place—when the limbs are alive they must have nutrition to live on, but such a condition as this can extend and continue, but if it reaches this stage and results in general infection, amputation, of course, in such instances is required. Up to several years ago from seventy-five to eighty-five per cent, roughly, came to amputation in from five to fifteen years, but modern lines of treatment have been able to prolong the incident of such an ending.

In my opinion, Mr. Burleyson's case as it stands today is about twelve years old. I am not able to state at this time whether amputation will be necessary or not in his case but it is my opinion, from my observation of the case from the spring of 1927 and continuing on during each year up to January 11, 1932, noting the progress and the conditions during these years, that amputation will probably become necessary at some future time. It has become progressively worse over this period of time and in the majority of cases it progresses and becomes worse. There is no cure known either to medical or surgical science."

Added to these, of course, were various witnesses who testified to the continuity of the trouble.

**The appellee's work record.**

The Government relies upon the work record of the appellee to defeat the claim.

There could be no more frank and open recital of the work record than that which came from the lips of the appellee himself.

The Court will note that this appellee, who had never passed beyond the tenth grade in school, and who had enlisted in the Marines at eighteen, was, on his discharge, asked to sign a waiver. He believed this waiver barred him from any possible relief. After his discharge by the medical survey, as permanently disabled, he, nevertheless, endeavored to work in order to live. He had no other means of support. He was receiving nothing from the Government and did not even know that he was entitled to hospitalization. It was years afterwards, when a fellow veteran advised him that waivers did not bar relief and that Congress had relieved against such waivers, that he first made application to the Veterans' Bureau, in the year 1925. (Page 16.) That was six years after his discharge.

During this time the appellee had made numerous efforts to work. All of these efforts are detailed in his testimony on pages 13 to 25 inclusive. It will be noted that these repeated efforts were spasmodic and short lived. Each period of employment had to be terminated because the appellee could no longer go on on account of his suffering. Generally the work was that of a night clerk in a hotel where he could sit with his feet propped up to relieve the circulation.

The frank testimony of the appellee is found on pages 18 to 25 inclusive of the transcript. Summarized briefly, it is this:

"I have endeavored to work since my discharge. The first time I ever went into the Bureau was in 1926 (seven years after his discharge), and they granted my application, and up until that time I didn't believe I had the right to go there for treatment. *I had no source of income upon which to rely.* I took medical treatment from time to time. *I had to work in order to live.*"

He first started at Mare Island classified as a riveter, but did no such work. He was transferred to the office, rested a good deal, took care of serial numbers on gasoline drums as his chief work.

"It made my feet swell up and look terribly bad. I did not undergo medical treatment at the Island. I thought if I went there they would let me out. I used the hot salt water and stayed home whenever I could."

Proceeding, he details his efforts at self-treatment, his endeavor to stay in bed, finally ending in his being compelled to give up the job and leave the Island. His only reason for quitting was his inability to work and he went to the Hot Springs for mineral baths. Then it was off and on from one job to another in an effort to sustain himself.

It is contended that when he went to the Southern Pacific he had a physical examination. It was a perfunctory affair of heart and lungs and sight, etc. No examination was made of his feet and he says (page 20):

"I did not disclose to them the fact that I was suffering with bad feet. I was afraid I couldn't get a job if I did."

Then two weeks off and more salt water treatments, with constant suffering and swelling. More work for the Southern Pacific and more suffering.

Why did he work? Let him answer!

> "I worked because I had no other way to live. I did not feel able to work. I got very bad and the heat seemed to affect me too and make me worse. I came back to California because I felt I would get relief again."

Then night work in the Merritt Hotel, where he sat propped up through the night with his feet on chairs to keep the blood from running down. To physician after physician, *all at his own expense.* Never working at anything more than a few months and then abandoning the position to take treatments and get relief from his agony.

At every place he attempted to conceal his condition in order to work and get money to pay physicians and eat. He was never discharged (page 24), but always had to leave on account of the pain.

He said (page 24):

> "I know of no occupation that I was able to be employed at except temporarily. I have never left any position for any other reason except my trouble."

Regarding the latter years, this evidence is undisputed:

> "Q. In the last four or five years have you done any work?
>
> A. No sir.
>
> Q. These last four or five years have been taken up how?

A. In hospitals and with doctors' treatments outside.

Q. Doctor; independent physicians outside. They were paid by whom?

A. By myself.

Q. Paid by yourself. Do you know of any gainful occupation whatsoever that you might be able to turn your hand to now in order to make a living?

A. No sir. If I had any I would be willing to try it."

For over four years prior to the trial he had never been able to wear shoes. When out of bed he wore woolen socks and slippers. One foot has no pulse.

The evidence discloses in this appellee an unique character.

Entering the Marines at eighteen, he suffered successively influenza, appendicitis, removal of tonsils, crushed arches, flat feet and Buerger's disease. He had them all in the brief year of service.

Ordered discharged for permanent disability, how can the Government now deny that disability? Its own record confronts it.

On his discharge a waiver was exacted. A young uniformed farmer boy, who knew nothing of the world, was not even advised that he was entitled to hospitalization and care. He therefore set out on a gallant struggle to earn a living by shifting from one job to another, when the going became too great to continue.

While other veterans were getting compensation and hospitalization, this uncomplaining veteran was

paying his own physicians, working in spite of pain to provide personal sustenance and physicians' care.

The very fact that he made an effort, under forbidding handicaps, to keep himself from charity and to obtain physical relief, is now urged by the Government as a barrier to recovery.

**Gainful occupation.**

This Court has held in *United States v. Rasar,* 45 Fed. (2d) 545 (9th Circuit), that:

> "Total disability exists when the disability renders it impossible to pursue *continuously* any gainful occupation *for which the Veteran is qualified.*"

This veteran was never equipped, by education or training, for any job except that of a farmer.

There can be no more complete parallel to the facts in this case than found in the concluding passages of the decision of this Court in *United States v. Rasar,* supra.

There, because the veteran had worked, the Government contested his claim. But the Court held that the statute does not require an incapacity to work at all, and held that he was not barred where the labor "was intermittent and was continued only for brief periods and invariably resulted in relapses which totally unfitted him for work."

The Government there contended, as it contends here, that there were various occupations to which the veteran might turn his attention. The language directly applicable to this case, is as follows:

> "The Appellee, prior to his enlistment in the military service, was a farmer, and his testimony gives unmistakable evidence that he is a man of very meager education. That he is utterly incapable of performing clerical work there can be no doubt. He has neither the education nor the training to qualify him for any such employment, nor is it possible for him at this period of life to fit himself for clerical work. It is worse than idle to speculate about the appellee being able to earn a livelihood in the performance of clerical duties."

Thus, the Government, who took a healthy young farmer into its Marine Corps and at the end of a year discharged him as permanently disabled, now contends that he is barred from relief because he has, at the risk of his life and in constant pain, endeavored to provide himself with funds to live and treat his diseased limbs.

As Lieutenant Kelly, the Government surgeon, and Dr. Eidenmuller, the attendant physician, pointed out, every effort at labor is at the expense of his health and the danger of his life. The questions of the trial judge developed this most clearly. Of course he can work, as can a tubercular or a man dying of diabetes, but every day's labor drains his resources and brings him nearer to the dread day when an amputation may become necessary.

The work performed by the appellee, under all the authorities, does not show him physically capable of continuously pursuing a gainful occupation for which the appellee is qualified.

The disability of the appellee has been not only legally complete but actually complete for years. We quote from his testimony (page 35):

> *"It has been four years since I have earned anything. I have no income at the present time."*

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THE AUTHORITIES.

No circuit in the United States has taken more advanced and liberal ground than the Ninth Circuit, in dealing with the labor record of veterans.

In *United States v. Griswold,* 61 Fed. (2d), 583, the veteran had worked intermittently for ten years. This involved work in a saw mill, in camp, driving team, river work, forest service, cant hook work, sledding and loading, cutting and raising crops and feeding cattle, general ranching, dairying, including milking and operation of a ranch, packer for forest fire station, hooker in a logging camp and lumbering by contract.

His wages were from $100.00 a month to $4.00 a day. This work continued intermittently from 1919 to 1929.

This Court held:

> "That there was substantial evidence to go to the jury upon the proposition that although plaintiff actually worked for long periods of time, he was not then able to do so, nor to do so continuously."

Ever since the decision in *United States v. Sligh,* 31 Fed. (2d), page 735, this Court has declined to

penalize a veteran for attempting to support himself by labor, where such labor was not continuous and uninterrupted and which was performed at the expense of his health.

In the latter case, the veteran received, during a part of the time, $125.00 a month, at another $250.00 per month, with an expense allowance. Yet it was found that within the meaning of the statute he was permanently disabled.

In *United States v. Rasar,* 45 Fed. (2d) 545, the veteran worked delivering fish, driving cars, acting as Game Warden. This labor, performed by one who had been a farmer, was held not to overcome the finding of the jury in his favor.

In *United States v. Meserve,* 44 Fed. (2d) 549, the work record was extensive. Discharged August 19, 1919, the policy lapsed for payment October 1, 1919. The burden was therefore on the appellee to establish that he became totally and permanently disabled prior to the last mentioned date.

Prior to military service he was a brakeman. After his discharge he returned to that employment and worked there from his discharge, September, 1919, until October, 1921, a period of twenty-six months, and thereafter irregularly as a taxicab driver during 1922 and 1923. During the twenty-six months he earned $5275.06, receiving $5.59 per day.

Commenting on the strength of this testimony, this Court said, in supporting the verdict of the jury in favor of the veteran:

> "From the record before us, however, it will not do to consider this proof abstractly, but there must be taken into consideration additional facts and circumstances which we believe shed material light upon the actual condition of the insured. The question is not what the railroad company's pay roll shows, *it is what was the physical condition of the insured at the time.*"

The veteran lived nine years after his discharge. This Court said:

> "We are not concerned with the relative weight and convincing force of the testimony offered in behalf of the respective parties. The question we are called upon to deal with is whether there was any substantial evidence from which the jury would be warranted in finding total and permanent disability as alleged."

Much has been made by the Government of the fact that the appellee Burleyson did not disclose his affliction when he went through the perfunctory physical examination for employment by the Southern Pacific and in his conversation with others.

The appellee explained his desire to conceal his affliction because the mere suggestion of his disability would prevent his employment. He suffered and worked in an attempt to live.

A similar situation arose in *United States v. Meserve,* supra, where it was admitted that the insured veteran wrote a letter in which he said that during the time he was working he was in good health; "in fact had never felt better in his life."

This Court understood the human element involved and pointed out that such efforts to clear themselves or to maintain employment were not to be held against the veterans.

Necessity for curtailing this brief, which is printed at the expense of counsel, forbids a more extended review of the authorities. Nor is there anything to be gained by such effort.

From the vast number of decisions we allude to the following more recent authorities, as decisive of the question that notwithstanding the evidence as to extended periods of labor, the finding of the jury is conclusive where there is any substantial evidence of disability.

We have restricted our citations, with one exception, to decisions rendered in 1932 and 1933.

In *United States v. Godfrey,* 47 Fed. (2d) 126, the Government relied upon admitted proof that from his discharge, in 1919, the veteran worked for a laundry company, with the exception of a few months, continuously until 1927—a period of eight years—earning from $30.00 to $35.00 a week.

The Court said:

> "To hold him remediless because he tried manfully to earn a living for his family and himself instead of yielding to justifiable invalidism, would not, in our view, accord with the treatment Congress intended to bestow on our war victims."

The foregoing language, "yielding to justifiable invalidism" recalls that the final discharge of Burley-

son, the appellee, contains a notation "invalided from the naval service," as well as "duration permanent."

That the finding of the jury is conclusive, no matter how sharp the conflict on the question of disability, in the face of a work record, is settled by the following authorities:

*United States v. Martin,* 54 Fed. (2d) 554 (Fifth Circuit);

*United States v. Irwin,* 61 Fed. (2d) 489 (Fifth Circuit);

*United States v. Harth,* 61 Fed. (2d) 541 (Eighth Circuit);

*Bartee v. United States,* 60 Fed. (2d) 247 (Sixth Circuit); reversing a directed verdict for the Government;

*Quinn v. United States,* 58 Fed. (2d) 19 (Third Circuit);

*Storey v. United States,* 60 Fed. (2d) 484 (Tenth Circuit);

*Garrison v. United States,* 62 Fed. (2d) 41 (Tenth Circuit); reversing a directed verdict for the Government;

*United States v. Baxter,* 62 Fed. (2d) 182 (Ninth Circuit); involving work record;

*United States v. Roberts,* 62 Fed. (2d) 594 (Tenth Circuit).

In the last case cited, the Court say:

> "In addition to this there is evidence that he tried repeatedly to work steadily and failed. This is strong evidence that he was not able to follow continuously a substantial gainful occupation."

This Court cannot fail to note that Burleyson was discharged as permanently disabled.

In *Storey v. United States,* supra, the veteran was discharged by a medical board, which held that he was only *two-sixteenths* disabled at the time of his discharge.

Commenting on this, the Court say:

> "Yet he was discharged because he was physically unable to be of any service in the armed forces of the Nation. * * * But there was no niche for plaintiff in his condition; he was discharged because there was no task connected with the Army which he was physically able to perform. * * * We do not understand how it is possible to rate one in such a condition as two-sixteenths disabled. Under these circumstances the rule is applicable that, 'when the testimony of a witness is positively contradicted by the physical facts, neither the Court nor the jury can be permitted to credit it.' "

The Court then reversed the judgment and nonsuit.

It would be profitless to review the facts of all these decisions. The opinions of the Ninth Circuit should be conclusive.

To conclude:

An eighteen year old farmer youth enlisted in the Marines as a healthy, normal citizen, with patriotic motives. He was stricken with all the afflictions that attack so many of our newly enlisted men. In swift succession, influenza, appendicitis, tonsilitis, crushed arches and Buerger's disease, attacked him. The military service had no further use for him. As a wreck, he was honorably discharged and thrown back branded as permanently disabled. He was compelled to sign a waiver.

For seven years after his discharge he remained in ignorance of his right to hospitalization treatment or compensation. He believed his rights dead. To support himself he worked intermittently, leaving job after job, when his disability no longer permitted him to continue.

The evidence conclusively shows that he was permanently afflicted with an incurable disease when he left the service; that there is no hope of a cure and only by constant rest and inactivity can he possibly escape amputation.

For four years he has been helpless and has earned nothing. He has been just as much disabled as if his legs were amputated, for they are useless extremities, clogged with coagulated blood. Every effort he made at labor was to support himself and pay physicians which he would not have required had he known his rights.

As the Presiding Judge pointed out in his questions, every effort at labor was at the expense of his health and in the face of constant agony.

To say that a verdict, based upon evidence thus clear and substantial, is to be reversed because a veteran has struggled, at the peril of his life, to support himself, is to destroy the spirit of the War Service Act.

Dated, San Francisco,
March 24, 1933.

Respectfully submitted,
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